or floors and ceilings are to be ordered, OCC suggests that an appropriate ceiling would be embedded costs and an appropriate floor would be LRSIC. See ¶ 128-131, *supra*.

As discussed in ¶¶ 227-229 of the NPRM, several states have taken actions to foster reciprocal compensation arrangements between incumbent LECs and competitors. As discussed below, OCC supports a modified bill and keep mechanism (see ¶ 239-243, *infra*). States that have implemented policies of pure bill and keep for an interim period with a transition to a mechanism where monetary compensation occurs for traffic imbalances could serve as a model for national policies.

The potential that new entrants will have to negotiate reciprocal compensation arrangements with each carrier in each state does not seem to be coming to pass. The idea that region- or company-wide negotiations should take place have been contained in the requests for negotiations from competitors such as AT&T and TCG.[15] This recognizes the commonality of the configured networks and should resolve any concerns that variances in states arrangements would create a barrier to entry.

**e. Symmetry (Paragraphs 235-238)**

**f. Bill and Keep Arrangements (Paragraphs 239-243)**

¶¶ 239-243 These paragraphs address bill and keep arrangements. The following comments are provided only to shed light on this topic in the event that the

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[15] Letter from Robert Annunziata, Chairman, President and Chief Executive Officer of TCG to Richard C. Notebaert, Chairman Ameritech Corporation, dated February 8, 1996. Letter from R. Reed Harrison, AT&T Vice-President Local Infrastructure and Access Management to Mr. Thomas W. White, President GTE Telephone Operations, dated March 11, 1996.

Commission decides to issue detailed specific rules on costing and pricing issues. In the PUCO's generic competition docket (Case No 95-845-TP-COI), OCC provided extensive comments on this topic.

OCC agrees with the definition of bill and keep as described in NPRM ¶ 239. The concept that each network recovers from its own end-users the cost of both originating traffic delivered to the other network and terminating traffic received from the other network is key to understanding that bill and keep does involve cost recovery and compensation. The cost recovery and compensation comes from the ratepayers of each network -- not from the other carrier. Each company is made whole through their own rate design and structure. Thus the allegation that bill and keep means that a competing carrier gets to use the incumbent LEC's network for "free" cannot withstand scrutiny.

OCC's modified bill and keep proposal allows for reasonable monetary compensation for consistent traffic imbalances. This is in keeping with the language in ¶ 239 that a bill and keep approach does not preclude a charge for transport of traffic.

A compensation mechanism for local traffic exchange will play a key role in determining the speed and quality of the growth of competition. A regime of mutual traffic exchange is attractive because it is the approach that has been used for local service for decades. Mutual traffic exchange entails local exchange carriers simply terminating local calls originated on the network of other local exchange carriers without charge. In a competitive environment, however, the ability to game such an approach requires that it be modified. Entrants may seek high volume customers and be the beneficiaries of large imbalances in the exchange of services. As a result, they would incur much lower costs for terminating competitors' calls than they impose on competitors.

On the other hand, a regime of reciprocal compensation may appear attractive because carriers pay for facilities used on other networks. Reciprocal compensation requires each local service provider to compensate every other service provider whose network is required to complete every call. In an interconnected network where there is mutual provision of identical functionalities, reciprocal compensation may be an unnecessary burden on commerce and provide the opportunity for anti-competitive pricing. It may also create unnecessary pressures for local measured service.

If the FCC decides to establish detailed federal rules on this issue, it should reject calls for simple bill and keep or pure reciprocal compensation schemes. It should preserve the mutual exchange of traffic to the extent possible and modify that system as necessary to prevent gaming, anti-competitive behaviors, or uneconomic outcomes. Incumbents may gain advantage by strategic pricing of network access. Pricing bottleneck network access to recover an excessive share of common costs would allow the carrier to price other services at lower costs. In the integrated digital network toward which the interoffice telecommunications network has largely evolved, efficient routing of calls should take precedence, using the technically most efficient path to complete local calls. Price differences for identical carrier services would not persist in a competitive marketplace and they should not dictate the way calls are routed.

Not only is the historic approach to compensation between local exchange carriers one of mutual traffic exchange, but this is the mechanism that appears to be emerging as the approach to compensation on information age networks, like the Internet. Rather than impose measurement, billing and financial transactions on the seamless exchange of bits, the Internet has adopted the telecommunications approach of mutual traffic exchange.

It is clear that charging for termination on a usage basis is wasteful and unnecessary. It is inconsistent with the manner in which costs are incurred, since costs are driven by peak capacity; it creates economic inefficiencies by imposing unnecessary costs of measurement and creating incentives to ask for excess capacity; it imposes substantial, unnecessary administrative costs; it creates additional regulatory costs to monitor imputation; and it allows arbitrage.

Mutual exchange allows parties to compensate one another at the level of functionalities. Each firm receives exactly what it gives, the termination of a call. To the extent that one firm is inefficient at terminating calls, it will find that its competitors can price their local service more attractively to end users (or it must endure lower than average profits). Since termination of calls is bundled with local service, the fact that differences in cost that result from mutual exchange are reflected at the level of overall prices or profits is appropriate.

In fact, full use of cost-based termination rates penalizes the more efficient provider and rewards the least efficient provider. Usage-based pricing also makes it difficult to market flat rate service or to try innovative approaches to pricing services.

Basically, usage-based pricing for interconnection will frustrate efforts to promote competition.

#### g. Other Possible Standards (Paragraph 244)

¶ 244 The suggestion of establishing an interim methodology (such as bill and keep) is supported by OCC. The current principles of mutual traffic exchange could be maintained for a one year period and then a mixed form of mutual traffic exchange whereby monetary compensation is provided only for traffic imbalances could be implemented. However, the need for the use of such an interim process should be determined by each state.

### II.D. Duties Imposed on "Telecommunications Carriers" by Section 251(a) (Paragraphs 245-249)

### II.E. Number Administration (Paragraphs 250-259)

Addressed in Part 2 of OCC's Comments, to be filed May 20, 1996 per NPRM ¶ 290.

### II.F. Exemptions, Suspensions, and Modifications (Paragraphs 260-261)

¶¶ 260-261 OCC reserves comment on this section until the reply cycle. However, OCC requests that the FCC clarify and quantify the definition of a rural carrier. Sec. 251(f)(2) states that suspensions and modifications are available for LECs with less than 2 percent of the Nation's subscriber lines. OCC is uncertain, even after carefully researching this issue, what the exact number of subscriber lines is that would qualify a carrier as a rural carrier. According to the information that OCC has been able to gather, a carrier eligible to apply for the exemption under Sec. 251(f)(2) would have to have fewer than 3,115,000 access lines in the aggregate nationwide. Thus, only nine holding companies would not be able to apply for a waiver or modification under this section -- the seven RBOCs, GTE and Sprint/United. A definitive quantification by the Commission of the threshold number of access lines needed to be classified as a rural carrier would be very useful as the 1996 Act is implemented.

OCC supports the tentative conclusion in NPRM ¶ 261 that the states alone have authority to make determinations under Sec. 251(f). This section of the 1996 Act is clear that it is indeed the states that will be implementing this provision. In fact, there is no mention of federal involvement at all. Finally, the requirements of 251(f) are those as to which the states are accustomed to analyzing and reaching conclusions. Economic impacts and technical feasibility are within the capabilities of the states to determine and federal standards are unnecessary.

## II.G. Continued Enforcement of Exchange Access and Interconnection Regulations (Paragraph 262)

## II.H. Advanced Telecommunications Capabilities (Paragraph 263)

## III. PROVISIONS OF SECTION 252

### III.A. Arbitration Process (Paragraphs 264-268)

¶ 265 The Commission seeks comment on what constitutes notice of the failure of a state commission to act under Sec. 252(e)(5), and what procedures should be established for interested parties to notify the Commission of such a failure. Minimally, such notice should be in writing and should state with specificity the nature of the state's failure, including the section of the Act as to which the state has failed to act. Such notice should also be served on the state commission. The Commission should specify a person or office at the Commission to receive the notices. Finally, OCC submits that the notices should be posted in electronic form to allow interested parties the opportunity to comment.

¶ 266 The Commission also asks for comment on what constitutes "failure to act." As the Commission notes, the Act provides a timeframe for automatic approval of both negotiated and arbitrated agreements. Failure to act may thus entail failure to arbitrate a disputed agreement or failure to conclude the arbitration within the timeframe dictated by Sec. 252(b)(4)(C). *See* ¶ 268, *infra.*

However, "fail[ure] to act to carry out [the state's] responsibility" may also constitute something more than mere inaction. It appears that failure to carry out responsibility equates to willfully disregarding the standards set out in the Act for approval or disapproval of arrangements. Secs. 252(c), (d) and (e)(2).[16]

[16] The remedy of Federal district court action for a party aggrieved by a state commission action is an additional option. Sec. 252(e)(6).

¶ 268 The Commission seeks comment on whether it should adopt standards for those instances in which it must conduct an arbitration where the state commission has failed to act. Sec. 252(e)(5). OCC submits that there should be some certainty at the Commission level, so that parties will know what to expect if they resort to the Commission's assistance. Of the two choices mentioned by the Commission ("final offer" arbitration and open-ended arbitration), it appears that "final offer" arbitration will offer the speediest method of resolving the long-standing disputes that the arbitration will address. However, we note the Commission's concern that "it is possible that the proposals submitted by the parties [in "final offer" arbitration] may not be consistent with the public interest and policies of sections 251 and 252." In the unlikely event that *both* "final offers" are inconsistent with public interest and the Act, it is incumbent on the Commission to reject both offers. This may not be classic "final offer" arbitration, but the overwhelming public interest in this area forbids adoption of an arrangement that is against the public interest. *See, e.g.*, Sec. 252(e)(2).

**III.B. Section 252(i) (Paragraphs 269-272)**

¶ 270 The Commission requests comments on the meaning of Sec. 252(i) because of the possibility that it would have to assume a state commission's duties, pursuant to Sec. 252(e)(5), to resolve disputes under Sec. 252(i). Clearly, the focus of enforcing the anti-discrimination provision in Sec. 252(i) is on the states. Yet the Commission has not proposed rules to govern the *states'* processes under Sec. 252(i). The issues invoked by Sec. 252(i) are such that they have to be resolved on a case-by-case basis.

The Commission asks, "Must interconnection, services, or network elements provided under a state-approved section 252 agreement be made available to any requesting telecommunications carrier ...?" The Commission tentatively concludes that the statute appears to preclude differential treatment among carriers. However, OCC notes that Sec. 252(i) requires interconnection, services or network elements provided for in an agreement to be made available to other carriers "upon the same terms and conditions" as in the original agreement. Not all carriers may be able to meet the conditions of a specific agreement. Thus this clearly implies that there can be some differential treatment of carriers.

¶ 271 The Commission asks whether "section 252(i) permit[s] the separation of section 251(b) and (c) agreements down to the level of the individual provisions of subsections (b) and (c) and the individual paragraphs of section 251?" As the Commission notes, these agreements "are the product of compromise between ILECs and requesting carriers, and *may* contain provisions to which a party agreed as specific consideration for some other provision." (Emphasis added.) Further, as the Commission also notes, unbundling the terms of an agreement may "affect the negotiation process by intensifying the importance of each individual term of the agreement."

OCC submits that the solution to the dilemma lies in carrying out the intentions of the parties to an agreement. If the parties explicitly state that the terms of the agreement are interdependent, then unbundling of the agreement should not be allowed or required. It may be that this will result in parties providing that all negotiated agreements are interdependent. We note, however, that in the very likely event of a state commission being called upon to arbitrate (Sec. 252(b)), the state commission can reject any party's claims that the elements of the "agreement" are to be interdependent.

## CONCLUSION

OCC appreciates the opportunity to comment on these crucial issues on behalf of the residential consumers of the State of Ohio. OCC has adopted as general principles with regard to the onset of local exchange competition that

- the benefits of competition should be secured for as many residential consumers as possible; and
- residential consumers should be protected, as far as possible, from any detriments arising from local exchange competition.

Adoption of reasonable, rational, and equitable rules governing interconnection, unbundled network elements, and resale by this Commission are crucial to the achievement of these goals.

OCC requests that the Commission carefully consider these issues. The end result here should be a set of rules that establishes general principles for the states to follow and adapt to their localized circumstances. The Commission should, however, direct uniform minimum standards for interconnection; establish a minimum set of unbundled network elements; and establish principles for price ceilings and floors for the various services covered in Sec. 251 of the Act.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that the Initial Comments of the Office of the Ohio Consumers' Counsel have been served by overnight mail to the International Transcription Service, and in diskette form to Janice Myles on this 15th day of May, 1996.

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